

BEFORE THE SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND  
HEARING AID DISPENSERS BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**John Kiely Ball**  
**AAA Hearing Services**  
**P.O. Box 81**  
**Moorpark, CA 93020**

**Hearing Aid Dispensers License**  
**No. HA 7244**

Licensee/Respondent


Case No. 1C-2009-29  
OAH No. 2010070603

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by  
the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board,  
Department of Consumer Affairs, as the Decision and Order in the above entitled matter.

This Decision shall become effective on February 17, 2012.

It is so ORDERED January 18, 2012.

  
\_\_\_\_\_  
FOR THE SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY AND HEARING AID DISPENSERS BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
LISA O'CONNOR, CHAIR

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA L. CASTRO  
Supervising Deputy Attorney General  
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7

8 **BEFORE THE**  
9 **SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID**  
10 **DISPENSERS BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1C-2009 29

14 **JOHN KIELY BALL**  
AAA Hearing Services  
P.O. Box 81  
Moorpark, California 93020

OAH No. 2010070603

15 **STIPULATED SETTLEMENT AND**  
16 **DISCIPLINARY ORDER**

17 Hearing Aid Dispenser License No. HA 7244,  
Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Annemarie Del Mugnaio (Complainant) is the Executive Officer of the Speech-  
22 Language Pathology and Audiology and Hearing Aid Dispensers Board (Board). She brought  
23 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,  
24 Attorney General of the State of California, by Michel W. Valentine, Deputy Attorney General.  
25

26 2. Respondent John Kiely Ball (Respondent) is represented in this proceeding by  
27 attorney Noah Jussim, whose address is: McGuire Woods, 1800 Century Park East, 8th Floor,  
28 Los Angeles, California 90067.

1       3.     On or about July 25, 2007, the Board issued Hearing Aid Dispenser License No. HA  
2     7244 to Respondent. This license was in full force and effect at all times relevant to the charges  
3     brought in Accusation No. 1C-2009 29 and will expire on July 31, 2012, unless renewed.

4                                   JURISDICTION

5       4.     Accusation No. 1C-2009 29 was filed before the Board, and is currently pending  
6     against Respondent. The Accusation and all other statutorily required documents were properly  
7     served on Respondent on June 10, 2010. Respondent timely filed his Notice of Defense  
8     contesting the Accusation. A copy of Accusation No. 1C-2009 29 is attached as exhibit A and  
9     incorporated herein by reference.

10                               ADVISEMENT AND WAIVERS

11       5.     Respondent has carefully read, fully discussed with counsel, and understands the  
12     charges and allegations in Accusation No. 1C-2009 29. Respondent has also carefully read, fully  
13     discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
14     Order.

15       6.     Respondent is fully aware of his legal rights in this matter, including the right to a  
16     hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
17     the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
18     to the issuance of subpoenas to compel the attendance of witnesses and the production of  
19     documents; the right to reconsideration and court review of an adverse decision; and all other  
20     rights accorded by the California Administrative Procedure Act and other applicable laws.

21       7.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
22     every right set forth above.

23                               CULPABILITY

24       8.     Respondent, by his authorized representative, admits that if the truth of each and  
25     every charge and allegation in Accusation No. 1C-2009 29 were established, cause would exist  
26     for discipline against Respondent's license. For the purpose of resolving the Accusation without  
27     the expense and uncertainty of further proceedings, Respondent hereby gives up his right to  
28     contest the causes for discipline in the Accusation.

1       9. In the event Respondent seeks to file a petition for early termination of probation or a  
2 petition to modify probation, this stipulation will then serve as an admission to all allegations  
3 contained in the Accusation in any such proceeding.

4       10. Respondent agrees that his license is subject to discipline and he agrees to be bound  
5 by the Board's probationary terms as set forth in the Disciplinary Order below.

6                                   CONTINGENCY

7       11. This stipulation shall be subject to approval by the Speech-Language Pathology and  
8 Audiology and Hearing Aid Dispensers Board. Respondent understands and agrees that counsel  
9 for Complainant and the staff of the Speech-Language Pathology and Audiology and Hearing Aid  
10 Dispensers Board may communicate directly with the Board regarding this stipulation and  
11 settlement, without notice to or participation by Respondent or his counsel. By signing the  
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
16 action between the parties, and the Board shall not be disqualified from further action by having  
17 considered this matter.

18       12. The parties understand and agree that facsimile copies of this Stipulated Settlement  
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
20 effect as the originals.

21       13. In consideration of the foregoing admissions and stipulations, the parties agree that  
22 the Board may, without further notice or formal proceeding, issue and enter the following  
23 Disciplinary Order:

24                                   DISCIPLINARY ORDER

25       IT IS HEREBY ORDERED that Hearing Aid Dispenser License No. HA 7244 issued to  
26 Respondent John Kiely Ball is revoked. However, the revocation is stayed and Respondent is  
27 placed on probation for four (4) years on the following terms and conditions.  
28

1           1.    MONITORING

2           Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
3   Board for its prior approval a plan of practice in which Respondent's practice shall be monitored  
4   by another hearing aid dispenser, who shall provide periodic reports to the Board. If the monitor  
5   resigns or is no longer available, Respondent shall, within 15 days, move to have a new monitor  
6   appointed, through nomination by Respondent and approval by the Board.

7           2.    ETHICS COURSE

8           Within sixty (60) days of the effective date of this decision, Respondent shall enroll in a  
9   course in ethics, at Respondent's expense, approved in advance by the Board. Respondent shall  
10   submit a certification of successful completion to the Board not later than 15 calendar days after  
11   successfully completing the course. Failure to successfully complete the course during the first  
12   year of probation is a violation of probation.

13          3.    SUPERVISION

14          Respondent shall not function as a supervisor during the period of probation for hearing aid  
15   dispenser trainees.

16          4.    OBEY ALL LAWS

17          Respondent shall obey all federal, state, and local laws, including all statutes and  
18   regulations governing the practice of the licensee.

19          Further, Respondent shall, within five (5) days of any arrest, submit to the Board in writing  
20   a full and detailed account of such arrest.

21          5.    COMPLY WITH PROBATION PROGRAM

22          Respondent shall fully comply with the probation program established by the Board and  
23   shall cooperate with the representatives of the Board.

24          6.    CHANGE OF ADDRESS NOTIFICATION

25          Respondent shall, within five (5) days of a change of residence or mailing address, notify  
26   the Board in writing of the new address.

27          7.    OUT-OF-STATE RESIDENCY

28          Respondent shall notify the Board immediately in writing if he leaves California to reside

1 or practice in another state.

2 Respondent shall notify the Board immediately upon return to California.

3 The period of probation shall not run during the time Respondent is residing or practicing  
4 outside California.

5 8. SUBMIT QUARTERLY WRITTEN DECLARATIONS

6 Respondent shall submit to the Board quarterly written declarations and verification of  
7 actions signed under penalty of perjury. These declarations shall certify and document  
8 compliance with all the conditions of probation.

9 9. NOTIFY EMPLOYER OF PROBATION TERMS AND RESTRICTIONS

10 When currently employed or applying for employment as a hearing aid dispenser,  
11 Respondent shall notify his employer of the probationary status of Respondent's license. This  
12 notification to the Respondent's current health care employer shall occur no later than the  
13 effective date of the Decision placing Respondent on probation. The Respondent shall notify any  
14 prospective health care employer of his probationary status with the Board prior to accepting such  
15 employment. This notification shall be by providing the employer or prospective employer with a  
16 copy of the Board's Decision placing Respondent on probation.

17 Respondent shall cause each employer to submit quarterly written declarations to the  
18 Board. These declarations shall include a performance evaluation.

19 Respondent shall notify the Board, in writing, of any change in his employment status,  
20 within ten (10) days of such change.

21 10. INTERVIEWS WITH BOARD REPRESENTATIVES

22 Respondent shall appear in person for interviews with the Board, or its designee, upon  
23 request at various intervals and with reasonable notice. An initial probation visit will be required  
24 within sixty (60) days of the effective date of the Decision. The purpose of this initial interview  
25 is to introduce Respondent to the Board's representatives and to familiarize Respondent with  
26 specific probation conditions and requirements. Additional meetings may be scheduled as needed.

27 11. EMPLOYMENT LIMITATIONS

28 While on probation, Respondent may not work as a faculty member in an accredited or

1 approved school of hearing aid dispensers.

2 12. EDUCATIONAL COURSE

3 Respondent shall take and successfully complete course work substantially related to the  
4 violation. The Board shall, within sixty (60) days of the effective date of the Decision, advise the  
5 Respondent of the course content and number of contact hours required. Within thirty (30) days  
6 thereafter, Respondent shall submit a plan to comply with this requirement. Respondent must  
7 obtain approval of such plan by the Board prior to enrollment in any course of study.

8 Respondent shall successfully complete the required remedial education no later than the  
9 end of the first year of probation. Upon successful completion of the course, Respondent shall  
10 cause the instructor to furnish proof to the Board immediately.

11 13. FUNCTION IN LICENSED CAPACITY

12 During probation, Respondent shall work in his capacity in the State of California. If  
13 Respondent is unable to secure employment in his capacity, the period of probation shall be tolled  
14 during that time.

15 14. MAINTAIN A VALID LICENSE

16 Respondent shall, at all times while on probation, maintain an active current license with  
17 the Board, including any period during which suspension or probation is tolled.

18 Should Respondent's license, by operation of law or otherwise, expire, upon renewal or  
19 reinstatement, Respondent's license shall be subject to any and all terms of this probation not  
20 previously satisfied.

21 15. VIOLATION OF PROBATION

22 If Respondent violates probation in any respect, the Board may seek to revoke probation  
23 and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice  
24 and the opportunity to be heard. If a Petition to Revoke Probation, an Accusation or Petition to  
25 Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the  
26 Board shall have continuing jurisdiction and the period of probation shall be extended until the  
27 matter is final.

28 16. COMPLETION OF PROBATION

Respondent's license will be fully restored upon successful completion of probation.

17. COST RECOVERY

Respondent shall reimburse the Board for the cost of the investigation and prosecution of this case. That amount shall be \$25,000.00, and shall be paid in full directly to the Board within thirty (30) days prior to the end of the probation period.

18. RESTITUTION

Respondent shall pay to the Board the amount of \$45,000.00 to compensate all proposed claimants who were not named in the Accusation identified as of November 22, 2011. That amount shall be paid within six (6) months of the effective date of the Decision. The Board shall have full, complete, and unfettered discretion regarding the distribution of these funds, pursuant to the following; the Board shall determine which, if any, of these claimants are entitled to compensation, and shall compensate them accordingly. After such distribution, the Board shall return any funds, if any, to the Respondent no later than 6 (six) months after the \$45,000 is paid by Respondent to the Board.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Noah Jussim. I understand the stipulation and the effect it will have on my hearing aid dispenser license. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

DATED: 12-20-11

John Kiely Ball  
JOHN KIELY BALL  
Respondent

I have read and fully discussed with Respondent John Kiely Ball the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/2/11

Noah Jussim  
Noah Jussim  
Attorney for Respondent



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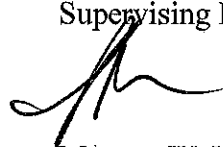
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board of the Department of Consumer Affairs.

Dated: 12/23/11

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
GLORIA L. CASTRO  
Supervising Deputy Attorney General



MICHEL W. VALENTINE  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 1C-2009 29**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ABRAHAM M. LEVY  
Deputy Attorney General  
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300 So. Spring Street, Suite 1702  
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10 **BEFORE THE**  
**SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND**  
**HEARING AID DISPENSERS BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1C-2009-29

14 JOHN KIELY BALL

15 AAA Hearing Services  
16 P.O. Box 81  
Moorpark, California 93020

**ACCUSATION**

17 License Number HA7244,

18 Respondent.  
19

20 Complainant alleges:

21 **PARTIES**

22 1. Annemarie Del Mugnaio (Complainant) brings this Accusation solely in her  
23 official capacity as the Executive Officer of the Speech-Language Pathology and Audiology and  
24 Hearing Aid Dispensers Board (Board), formally known as the Hearing Aid Dispensers Bureau,  
25 Department of Consumer Affairs.

26 2. On or about July 25, 2007, the Bureau, now known as the Speech-Language  
27 Pathology and Audiology and Hearing Aid Dispensers Board, issued Hearing Aid Dispenser  
28 ///

1 License Number HA 7244 to John Kiely Ball (Respondent). Respondent's license is current  
2 through July 31, 2010.

### 3 JURISDICTION

4 3. This Accusation is brought before the Speech-Language Pathology and Audiology  
5 and Hearing Aid Dispensers Board, under the authority of the following laws. All section  
6 references are to the Business and Professions Code unless otherwise indicated.

7 4. Section 3306 of the Code provides, in pertinent part,

8 (a) "Practice of fitting or selling hearing aids," as used in this chapter, means those  
9 practices used for the purpose of selection and adaptation of hearing aids, including direct  
10 observation of the ear, testing of hearing in connection with the fitting and selling of  
11 hearing aids, taking of ear mold impressions, fitting or sale of hearing aids, and any  
12 necessary postfitting counseling. The practice of selling hearing aids does not include the  
13 act of concluding the transaction by a retail clerk.

14 5. Section 3401 of the Code provides, in pertinent part, that the bureau may deny,  
15 issue subject to terms and conditions, suspend or revoke a license, or impose conditions of  
16 probation upon a licensee, for any of the following causes:

17 "(g) Fraud or misrepresentation in the fitting or selling of a hearing aid.

18 "(h) The employment, to perform any act covered by this chapter, of any person whose  
19 license has been suspended, revoked, or who does not possess a valid license issued under  
20 this chapter.

21 "(l) Violation of any provision of this chapter or of any regulation adopted pursuant to  
22 this chapter.

23 "(m) Any cause that would be grounds for denial of an application for a license.

24 "(n) Violation of Section 1689.6 or 1793.02 of the Civil Code."

25 6. The California Civil Code, section 1793.02, also known as the Song-Beverly  
26 Consumer Warranty Act, provides, in pertinent part that:

27 "(a) All new and used assistive devices sold at retail in this state shall be accompanied  
28 by the retail seller's written warranty which shall contain the following language: "This

1 assistive device is warranted to be specifically fit for the particular needs of you, the  
2 buyer. If the device is not specifically fit for your particular needs, it may be returned to  
3 the seller within 30 days of the date of actual receipt by you or completion of fitting by the  
4 seller, whichever occurs later. If you return the device, the seller will either adjust or  
5 replace the device or promptly refund the total amount paid. This warranty does not affect  
6 the protections and remedies you have under other laws." In lieu of the words "30 days"  
7 the retail seller may specify any longer period.

8 "(b) The language prescribed in subdivision (a) shall appear on the first page of the  
9 warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the  
10 time of the sale of the device.

11 "(c) If the buyer returns the device within the period specified in the written warranty,  
12 the seller shall, without charge and within a reasonable time, adjust the device or, if  
13 appropriate, replace it with a device that is specifically fit for the particular needs of the  
14 buyer. If the seller does not adjust or replace the device so that it is specifically fit for the  
15 particular needs of the buyer, the seller shall promptly refund to the buyer the total amount  
16 paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the  
17 buyer all payments and any assistive device or other consideration exchanged as part of

18 the transaction and shall promptly cancel or cause to be canceled all contracts,  
19 instruments, and security agreements executed by the buyer in connection with the sale.  
20 When a sale is rescinded under this section, no charge, penalty, or other fee may be  
21 imposed in connection with the purchase, fitting, financing, or return of the device."

22 7. Business and Professions Code section 3350 provides, in pertinent part,  
23 "that it is unlawful for an individual to engage in the practice of fitting or selling of  
24 hearing aids, or to display a sign or in any other way to advertise or hold himself  
25 or herself out as being so engaged without having first obtained a license from the  
26 bureau under the provisions of this chapter. Nothing in this chapter shall prohibit a  
27 corporation, partnership, trust, association or other like organization maintaining  
28 an established business address from engaging in the business of fitting or selling,

1 or offering for sale, hearing aids at retail without a license, provided that any and  
2 all fitting or selling of hearing aids is conducted by the individuals who are  
3 licensed pursuant to the provisions of this chapter.”

4 8. Section 3364 (a) of the Code provides that every licensee who engages in the  
5 practice of fitting or selling hearing aids shall have and maintain an established retail business  
6 address to engage in that fitting or selling, routinely open for service to customers or clients. The  
7 address of the licensee's place of business shall be registered with the bureau as provided in  
8 Section 3362.

9 9. Section 3429 of the Code provides that it is unlawful to engage in the practice of  
10 fitting or selling hearing aids without the licensee having and maintaining an established business  
11 address, routinely open for service to his clients.

12 10. Section 125.3(a) of the Code provides, in pertinent part that, except as otherwise  
13 provided by law, in any order issued in resolution of a disciplinary proceeding before any board  
14 within the Department of Consumer Affairs, upon request of the entity bringing the proceeding,  
15 the administrative law judge may direct a licensee found to have committed a violation or  
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
17 and enforcement of the case.

18 Customer R.S.

19 FIRST CAUSE FOR DISCIPLINE

(Violation of Song-Beverly Consumer Warranty Act)

20 [Bus. & Prof. Code § 3401(n); Cal. Civ. Code of Reg. § 1793.02. ]

21 11. Respondent owned and operated Advanced Hearing Centers (“AHC”), a hearing  
22 aid dispenser corporation comprised of approximately fourteen offices in California and in  
23 Nevada.

24 12. On or about March 22, 2007 R.S. purchased two hearing aids from AHC’s  
25 Thousand Oaks Office for \$6495.00. Respondent and R.S. signed an agreement, “Hearing System  
26 Purchase Agreement.”

27 13. The agreement said the following: “Buyers can cancel this purchase within 30  
28 days of the delivery if they are not satisfied, with all money paid by being refunded less a fee of

1 15% of the total purchase price as allowed for under California State Law.”

2 14. In any agreement for the purchase of hearing aids the following warranty language  
3 must appear on the hearing aid purchase agreement/receipt delivered to the buyer, pursuant to the  
4 Song-Beverly Consumer Warranty Act:

5 “This assistive device is warranted to be specifically fit for the particular needs of  
6 you, the buyer. If the device is not specifically fit for your particular needs, it may  
7 be returned to the seller within 30 days of the date of actual receipt by you or  
8 completion of fitting by the seller, whichever occurs later. If you return the device,  
9 the seller will either adjust or replace the device or promptly refund the total  
10 amount paid. This warranty does not affect the protections and remedies you have  
11 under other laws.”

12 15. Respondent’s “Hearing System Purchase Agreement” failed to include this  
13 language.

14 16. When presented with a copy of the “Hearing System Purchase Agreement”  
15 Respondent acknowledged that this document was the contract he signed with customer R.S. He  
16 further acknowledged that the language allowing him to retain 15% of the purchase price violates  
17 California Law, the Song-Beverly Consumer Warranty Act specifically, which requires a full  
18 refund within 30 days if the customer is unsatisfied with his hearing aid.

19 17. Respondent’s contract with R.S., as set forth below, violates 3401(n) of the Code  
20 and section 1793.02 of the Civil Code:

21 a. Respondent’s “Hearing System Purchase Agreement” failed to include  
22 required warranty language, and

23 b. Respondent’s Hearing System Purchase Agreement allowing Respondent  
24 to retain 15% of the purchase price of a properly returned hearing aid violated the Song-Beverly  
25 Consumer Warranty Act.

26 18. Respondent is subject to discipline accordingly.

27 ///

28 ///

Customer B.K.

SECOND CAUSE FOR DISCIPLINE  
(Misrepresentation in the Fitting or Selling of a Hearing Aid)  
[Bus. & Prof. § 3401(g)]

19. Respondent made a misrepresentation in the fitting or selling of a hearing aid to consumer B.K. and is subject to disciplinary action under section 3401(g). The circumstances are as follows:

20. Customer B.K. signed a Hearing System Purchase Agreement for hearing aids for the purchase price of \$4595.00 on February 16, 2009 and accepted delivery of these hearing aids on February 23, 2009. Customer B.K. was dissatisfied with the audible quality of the hearing aids. Customer B.K. returned these hearing aids for an upgraded version to Respondent, which he took possession of on March 23, 2009. Customer B.K. signed a new purchase agreement dated March 17, 2009 for these upgraded hearing aids for the purchase price of \$4195. A specific notation was made in the March 17, 2009 purchase agreement concerning when the 30 day refund period would begin. The notation reads "(f)rom 3/25/09." B.K. returned the hearing aids on approximately April 15, 2009 and demanded a full refund. An AHC employee told him that Respondent would refund the money and signed an acknowledgment that the employee had received the hearing aids. B.K. went back to AHC in early June 2009 and spoke to AHC's new owner, Michael Owen (Owen). New owner Owen explained to B.K. that he had purchased AHC from Respondent on April 1, 2009 but that, pursuant to their agreement of sale, Respondent was responsible for all hearing aids sold before April 1, 2009.

21. This business purchase agreement for AHC states as follows:

"If a customer informs Buyer that he wishes to return a product or cancel an order which was made prior to closing, Buyer shall immediately contact Seller and provide Seller with all pertinent information regarding such return or cancellation and Seller shall resolve such return or cancellation in a manner consistent with Seller's past business practice and the procedure used by Seller up to the time of closing; and 2) "... Seller is responsible for and will refund any and all amounts



1 due to customer"; and "In no event shall any return be allowed more than 30 days  
2 after delivery of the product."

3 22. Owen provided B.K. with Respondent's telephone number. B.K. called and talked  
4 to Respondent. Respondent told him that Owen was responsible to provide him with a refund.

5 23. Respondent's conduct, by and through the conduct of his employees, in  
6 misrepresenting to B.K. that he would receive a prompt refund within 30 days of returning his  
7 hearing aids because they did not fit his needs as promised in the "Agreement" constitutes a  
8 misrepresentation in the fitting and selling of hearing aids to B.K., subjecting Respondent to  
9 discipline under section 3401(g) of the Code.

10 THIRD CAUSE FOR DISCIPLINE  
11 (Violation of Song-Beverly Act Warranty)  
12 [Bus. & Prof. Code § 3401(n); Cal. Civ. Code of Reg. § 1793.02. ]

13 24. Complainant realleges paragraphs 20 through 23 as if fully set forth herein.

14 25. Respondent's conduct constitutes a failure to provide a prompt refund to B.K. after  
15 he returned his hearing aids because they did not fit his needs and did so within 30 days of receipt  
16 or completion of fitting, subjecting Respondent to discipline within the meaning of section  
17 3401(n) of the Code and section 1793.02 of the Civil Code.

18 Customer L.R.

19 FOURTH CAUSE FOR DISCIPLINE  
20 (Misrepresentation in the fitting or selling of a hearing aid)  
21 [Bus. & Prof. § 3401(g)]

22 26. Respondent made a misrepresentation in the fitting or selling of a hearing aid to  
23 customer L.R. and is subject to disciplinary action under section 3401(g) of the Code. The  
24 circumstances are as follows:

25 27. L.R. purchased hearing aids from Respondent at AHC's Thousand Oaks office for  
26 the purchase price of \$5000.00 and accepted delivery of these aids on February 13, 2009.  
27 Throughout February 2009 customer L.R. bought his hearing aids back for fittings. On March 11,  
28 2009 customer L.R. contacted Respondent and demanded a full refund because he was again  
dissatisfied with the hearing aids' wear, comfort, and audible quality. Respondent refused to give

1 him a refund. Customer L.R. reiterated his demand for a full refund. Respondent also said that  
2 L.R. had purchased a set of hearing aids from him previously on November 24, 2008 and received  
3 a full refund on them. Respondent stated that as a result he was not legally required to provide  
4 L.R. with another refund. Respondent refunded the purchase price of the hearing aid in late  
5 March 2009 only after customer B.K.'s friend picketed Respondent's place of business.

6 28. Respondent misrepresented to L.R. that he would be provided a product that fit his  
7 needs or he would receive a prompt refund as stated in the "Agreement." Respondent's conduct,  
8 accordingly, constitutes a misrepresentation in the fitting or selling of hearing aids to L.R.  
9 subjecting Respondent to discipline within the meaning of section 3401(g) of the Code.

10 FIFTH CAUSE FOR DISCIPLINE

11 (Violation of Song-Beverly Consumer Warranty Act)

12 [Bus. & Prof. Code § 3401(n); Cal. Civ. Code of Reg. § 1793.02. ]

13 29. Complainant realleges paragraphs 27 and 28 as if fully set forth herein.

14 30. Respondent's conduct constitutes failure to provide either a product that fit L.R.'s  
15 needs or a prompt refund to L.R. within 30 days of returning the hearing aids, subjecting  
16 Respondent to discipline within the meaning of section 3401(n) of the Code and section 1793.02  
17 of the Civil Code.

18 Customer D. B.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Misrepresentation in the fitting or selling of a hearing aid)

21 [Bus. & Prof. § 3401(g)]

22 31. Respondent is subject to disciplinary action under section 3401(g) in that  
23 Respondent made a misrepresentation in the fitting or selling of a hearing aid to D.B. The  
24 circumstances are as follows:

25 32. Customer D.B. purchased hearing aids from AHC's Thousand Oaks office on  
26 November 18, 2008 for \$3,400.00. He returned on November 26, 2008 and attempted to return  
27 his hearing aids because they caused him dizziness. He had an appointment on December 3, 2008  
28 to return his hearing aids and obtain his refund. An AHC representative canceled the  
appointment. Without an appointment D.B. went to AHC's Thousand Oaks on December 12,  
2008 and left his hearing aids on the counter. Respondent attempted to give the hearing aids back

1 to D.B. but D.B. refused to accept them. He asked at that time for a full refund. Respondent  
2 admitted that customer D.B. had returned his hearing aids for a full refund. D.B. filed a complaint  
3 with the Ventura County District Attorney's office in February 2009 and also filed a civil  
4 complaint against Respondent. Prior to the first court appearance of this complaint Respondent  
5 provided D.B. with a full refund.

6 33. Respondent's conduct constitutes misrepresentation in the fitting or selling of  
7 hearing aids. Respondent misrepresented to D.B. that he would be provided a product that fit his  
8 needs or he would receive a prompt refund as stated in the "Agreement." Respondent is therefore  
9 subject to discipline within the meaning of section 3401(g) of the Code.

10 SEVENTH CAUSE FOR DISCIPLINE

11 (Violation of Song-Beverly Consumer Warranty Act)

12 [Bus. & Prof. Code § 3401(n); Cal. Civ. Code of Reg. § 1793.02. ]

13 34. Complainant realleges paragraphs 32 and 33 as if fully set forth herein.

14 35. Respondent's conduct constitutes failure to provide either a product that fit D.B.'s  
15 needs or a prompt refund to D.B. within 30 days of returning the hearing aids, subjecting  
16 Respondent to discipline within the meaning of section 3401(n) of the Code and section 1793.02  
17 of the Civil Code.

18 Customer K.M.

19 EIGHTH CAUSE FOR DISCIPLINE

20 (Misrepresentation in the fitting or selling of a hearing aid)

21 [Bus. & Prof. § 3401(g)]

22 36. Respondent is subject to disciplinary action under section 3401(g) in that  
23 Respondent made a misrepresentation in the fitting or selling of a hearing aid to K.M. The  
24 circumstances are as follows:

25 37. K.M. purchased hearing aids from AHC on October 10, 2007 and signed a  
26 purchase agreement on that date for the purchase price of \$7500.00. K.M. took delivery of  
27 hearing aids from AHC on October 16, 2007. During the 30-day warranty period K.M. sought  
28 adjustments to the hearing aid. Due to the unresolved feedback and background noise K.M. asked  
for a full refund within the 30-day period. Staff at AHC told K.M. and her husband that only  
AHC's owner could authorize a refund but that he was not available to speak to her until January

1 2008. On February 25 2008 K.M.'s husband called to speak to Respondent. AHC staff told  
2 K.M.'s husband that Respondent had been informed about K.M.'s refund demand and that  
3 Respondent intended to contact K.M. Respondent never contacted K.M. or her husband and K.M.  
4 never received a refund.

5 38. Respondent's conduct constitutes a misrepresentation in the fitting or selling of  
6 hearing aids in that Respondent misrepresented to K.M. that she would be satisfied with the way  
7 the hearing aids worked and fit or she would receive a prompt refund within 30 days of returning  
8 the hearing aids as stated in the "Agreement;" subjecting Respondent to discipline under section  
9 3401(g) of the Code.

10 NINTH CAUSE FOR DISCIPLINE  
11 (Violation of Song-Beverly Consumer Warranty Act)  
12 [Bus. & Prof. Code § 3401(n); Cal. Civ. Code of Reg. § 1793.02. ]

13 39. Complainant realleges paragraphs 37 and 38 as if fully set forth herein.

14 40. Respondent's conduct constitutes a failure to provide a prompt refund under  
15 warranty to K.M. after she returned the hearing aids that did not fit her needs and did so within 30  
16 days of receipt or completion of fitting, subjecting Respondent to discipline within the meaning of  
17 section 3401(n) of the Code and section 1793.02 of the Civil Code.

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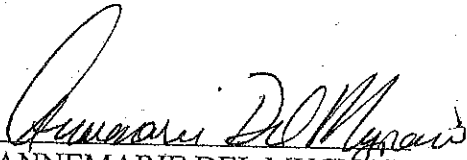
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Hearing Aid Dispenser License Number HA 7244, issued to John Kiely Ball;
2. Ordering John Kiely Ball to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 10, 2010

  
ANNEMARIE DEL MUGNAIO  
Executive Officer  
Speech-Language Pathology and Audiology  
and Hearing Aid Dispensers Board  
Department of Consumer Affairs  
State of California  
Complainant